

ASSEMBLY BILL

No. 530

Introduced by Assembly Member Krekorian

February 25, 2009

An act to amend Section 3485 of, and to add Section 3486 to, the Civil Code, to amend Section 1161 of the Code of Civil Procedure, and to repeal Section 11571.1 of the Health and Safety Code, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

AB 530, as introduced, Krekorian. Unlawful detainer: controlled substances and firearms.

Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer, including conduct involving illegally selling a controlled substance, or the commission of an offense involving unlawful possession or use of illegal weapons or ammunition or the use of the premises to further that purpose. Any of those acts may be deemed to constitute committing a nuisance on the premises.

Existing law authorizes, in specified counties, only until January 1, 2010, a city prosecutor or city attorney to file an action for unlawful detainer in the name of the people against any person who is in violation of the nuisance or the illegal purpose provisions of the unlawful detainer provision described above, with respect to controlled substances or unlawful weapons or ammunition. These provisions also impose specified reporting requirements regarding the implementation of these programs upon the city attorney and city prosecutor of each participating jurisdiction.

This bill would make the latter provisions operative statewide, and would make the provisions operative indefinitely, but would not continue

the reporting requirements. The bill would also make related technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3485 of the Civil Code is amended to
2 read:

3 3485. (a) To abate the nuisance caused by illegal conduct
4 involving an unlawful weapons or ammunition purpose on real
5 property, the city prosecutor or city attorney may file, in the name
6 of the people, an action for unlawful detainer against any person
7 who is in violation of the nuisance or illegal purpose provisions
8 of subdivision 4 of Section 1161 of the Code of Civil Procedure,
9 with respect to that unlawful weapons or ammunition purpose. In
10 filing this action, which shall be based upon an arrest report or
11 other report by a law enforcement agency, reporting an offense
12 committed on the property and documented by the observations
13 of a police officer, the city prosecutor or city attorney shall use
14 the procedures set forth in Chapter 4 (commencing with Section
15 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except
16 that in cases filed under this section, the following also shall apply:

17 (1) (A) Prior to filing an action pursuant to this section, the city
18 prosecutor or city attorney shall give 30 calendar days' written
19 notice to the owner, requiring the owner to file an action for the
20 removal of the person who is in violation of the nuisance or illegal
21 purpose provisions of subdivision 4 of Section 1161 of the Code
22 of Civil Procedure with respect to an unlawful weapons or
23 ammunition purpose.

24 (B) This notice shall include sufficient documentation
25 establishing a violation of the nuisance or illegal purpose provisions
26 of subdivision 4 of Section 1161 of the Code of Civil Procedure
27 and shall be served upon the owner and the tenant in accordance
28 with subdivision (e).

29 (C) The notice to the tenant shall also include on the bottom of
30 its front page, in at least 14-point bold type, the following:

31 "Notice to Tenant: This notice is not a notice of eviction.
32 However, you should know that an eviction action may soon be
33 filed in court against you for an unlawful weapons or ammunition

1 activity, as described above. You should call (insert name and
2 telephone number of the city attorney or prosecutor pursuing the
3 action) or a legal assistance provider to stop the eviction action if
4 any of the following is applicable:

- 5 (i) You are not the person named in this notice.
- 6 (ii) The person named in the notice does not live with you.
- 7 (iii) The person named in the notice has permanently moved.
- 8 (iv) You do not know the person named in the notice.
- 9 (v) You have any other legal defense or legal reason to stop

10 the eviction action. A list of legal assistance providers is attached
11 to this notice. Some provide free legal help if you are eligible.”

12 (D) The owner shall, within 30 calendar days of the mailing of
13 the written notice, either provide the city prosecutor or city attorney
14 with all relevant information pertaining to the unlawful detainer
15 case, or provide a written explanation setting forth any
16 safety-related reasons for noncompliance, and an assignment to
17 the city prosecutor or city attorney of the right to bring an unlawful
18 detainer action against the tenant.

19 (E) The assignment shall be on a form provided by the city
20 prosecutor or city attorney and may contain a provision for costs
21 of investigation, discovery, and reasonable attorney’s fees, in an
22 amount not to exceed six hundred dollars (\$600).

23 (F) If the city prosecutor or city attorney accepts the assignment
24 of the right of the owner to bring the unlawful detainer action, the
25 owner shall retain all other rights and duties, including the handling
26 of the tenant’s personal property, following issuance of the writ
27 of possession and its delivery to and execution by the appropriate
28 agency.

29 (2) Upon the failure of the owner to file an action pursuant to
30 this section, or to respond to the city prosecutor or city attorney
31 as provided in paragraph (1), or having filed an action, if the owner
32 fails to prosecute it diligently and in good faith, the city prosecutor
33 or city attorney may file and prosecute the action, and join the
34 owner as a defendant in the action. This action shall have
35 precedence over any similar proceeding thereafter brought by the
36 owner, or to one previously brought by the owner and not
37 prosecuted diligently and in good faith. Service of the summons
38 and complaint upon the defendant owner shall be in accordance
39 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
40 Code of Civil Procedure.

(3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including the costs of investigation and discovery and reasonable attorney's fees. These costs shall be assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1), and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

(4) This article shall not prevent a local governing body from adopting and enforcing laws, consistent with this article, relating to weapons or ammunition abatement. If local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(5) This article shall not prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(b) In any proceeding brought under this section, the court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the court finds that the person has engaged in the activities described in subdivision (a). Persons removed pursuant to this section may be permanently barred from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this subdivision to return to or reenter any portion of the entire premises.

(c) For purposes of this section, "unlawful weapons or ammunition purpose" means the illegal use, manufacture, causing to be manufactured, importation, possession, possession for sale, sale, furnishing, or giving away of any of the following:

(1) A firearm, as defined in subdivision (b) of Section 12001 of the Penal Code.

(2) Any ammunition, as defined in paragraph (2) of subdivision (b) of Section 12316 or subdivisions (a) and (b) of Section 12323 of the Penal Code.

(3) Any assault weapon, as defined in Section 12276, 12276.1, or 12276.5 of the Penal Code.

(4) Any .50 BMG rifle, as defined in Section 12278 of the Penal Code.

1 (5) Any tear gas weapon, as defined in Section 12402 of the
2 Penal Code.

3 (d) Notwithstanding subdivision (b) of Section 68097.2 of the
4 Government Code, a public entity may waive all or part of the
5 costs incurred in furnishing the testimony of a peace officer in an
6 unlawful detainer action brought pursuant to this section.

7 (e) The notice and documentation described in paragraph (1)
8 of subdivision (a) shall be given in writing and may be given either
9 by personal delivery or by deposit in the United States mail in a
10 sealed envelope, postage prepaid, addressed to the owner at the
11 address known to the public entity giving the notice, or as shown
12 on the last equalized assessment roll, if not known. Separate notice
13 of not less than 30 calendar days and documentation shall be
14 provided to the tenant in accordance with this subdivision. Service
15 by mail shall be deemed to be completed at the time of deposit in
16 the United States mail. Proof of giving the notice may be made by
17 a declaration signed under penalty of perjury by any employee of
18 the public entity which shows service in conformity with this
19 section.

20 ~~(f) This section shall apply only to the following courts:~~

21 ~~(1) In the County of Los Angeles, any court having jurisdiction~~
22 ~~over unlawful detainer cases involving real property situated in~~
23 ~~the City of Los Angeles or the City of Long Beach.~~

24 ~~(2) In the County of San Diego, any court having jurisdiction~~
25 ~~over unlawful detainer cases involving real property situated in~~
26 ~~the City of San Diego.~~

27 ~~(3) In the County of Alameda, any court with jurisdiction over~~
28 ~~unlawful detainer cases involving real property situated in the City~~
29 ~~of Oakland.~~

30 ~~(4) In the County of Sacramento, any court with jurisdiction~~
31 ~~over unlawful detainer cases involving real property situated in~~
32 ~~the City of Sacramento.~~

33 ~~(g) (1) The city attorney and city prosecutor of each~~
34 ~~participating jurisdiction shall provide to the Judicial Council the~~
35 ~~following information:~~

36 ~~(A) The number of notices provided pursuant to paragraph (1)~~
37 ~~of subdivision (a).~~

38 ~~(B) The number of cases filed by an owner, upon notice.~~

39 ~~(C) The number of assignments executed by owners to the city~~
40 ~~attorney or city prosecutor.~~

1 ~~(D) The number of three-day, 30-day, or 60-day notices issued~~
2 ~~by the city attorney or city prosecutor.~~

3 ~~(E) The number of cases filed by the city attorney or city~~
4 ~~prosecutor.~~

5 ~~(F) The number of times that an owner is joined as a defendant~~
6 ~~pursuant to this section.~~

7 ~~(G) As to each case filed by an owner, the city attorney, or the~~
8 ~~city prosecutor, the following information:~~

9 ~~(i) The number of judgments ordering an eviction or partial~~
10 ~~eviction, and specifying whether each was a default judgment,~~
11 ~~stipulated judgment, or judgment following trial.~~

12 ~~(ii) The number of cases, listed by separate categories, in which~~
13 ~~the case was withdrawn or in which the tenant prevailed.~~

14 ~~(iii) The number of other dispositions, and specifying the~~
15 ~~disposition.~~

16 ~~(iv) The number of defendants represented by counsel.~~

17 ~~(v) Whether the case was a trial by the court or a trial by a jury.~~

18 ~~(vi) Whether an appeal was taken, and, if so, the result of the~~
19 ~~appeal.~~

20 ~~(vii) The number of cases in which partial eviction was~~
21 ~~requested, and the number of cases in which the court ordered a~~
22 ~~partial eviction.~~

23 ~~(H) As to each case in which a notice was issued, but no case~~
24 ~~was filed, the following information:~~

25 ~~(i) The number of instances in which a tenant voluntarily~~
26 ~~vacated.~~

27 ~~(ii) The number of instances in which a tenant vacated a unit~~
28 ~~prior to the providing of the notice.~~

29 ~~(iii) The number of cases in which the notice provided pursuant~~
30 ~~to subdivision (a) was erroneously sent to the tenant. This shall~~
31 ~~include a list of the reasons, if known, for the erroneously sent~~
32 ~~notice, such as reliance on information on the suspected violator's~~
33 ~~name or address that was incorrect, a clerical error, or any other~~
34 ~~reason.~~

35 ~~(iv) The number of other resolutions, and specifying the type~~
36 ~~of resolution.~~

37 ~~(2) (A) Information compiled pursuant to this section shall be~~
38 ~~reported annually to the Judicial Council on or before January 30~~
39 ~~of each year.~~

~~(B) The Judicial Council shall thereafter submit a brief report to the Senate and Assembly Committees on Judiciary on or before April 15, 2009, summarizing the information collected pursuant to this section and evaluating the merits of the pilot programs established by this section. The report for this section may be combined with the Judicial Council report submitted for the pilot program established by Section 11571.1 of the Health and Safety Code.~~

~~(h) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.~~

SEC. 2. Section 3486 is added to the Civil Code, to read:

3486. (a) To effectuate the purposes of this article, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to a controlled substance purpose. In filing this action, which shall be based upon an arrest report or on another action or report by a law enforcement agency, the city prosecutor or city attorney shall utilize the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:

(1) (A) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give 30 calendar days' written notice to the owner, requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to a controlled substance purpose.

(B) This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (e).

(C) The notice to the tenant shall also include on the bottom of its front page, in at least 14-point bold type, the following:

"Notice to Tenant: This notice is not a notice of eviction. However, you should know that an eviction action may soon be filed in court against you for suspected drug activity, as described

1 above. You should call (insert name and telephone number of the
2 city attorney or prosecutor pursuing the action) or legal aid to stop
3 the eviction action if any of the following is applicable:

- 4 (i) You are not the person named in this notice.
- 5 (ii) The person named in the notice does not live with you.
- 6 (iii) The person named in the notice has permanently moved.
- 7 (iv) You do not know the person named in the notice.
- 8 (v) You have any other legal defense or legal reason to stop the
9 eviction action.

10 A list of legal assistance providers is attached to this notice.
11 Some provide free legal help if you are eligible.”

12 (D) The owner shall, within 30 calendar days of the mailing of
13 the written notice, either provide the city prosecutor or city attorney
14 with all relevant information pertaining to the unlawful detainer
15 case, or provide a written explanation setting forth any
16 safety-related reasons for noncompliance, and an assignment to
17 the city prosecutor or city attorney of the right to bring an unlawful
18 detainer action against the tenant.

19 (E) The assignment shall be on a form provided by the city
20 prosecutor or city attorney and may contain a provision for costs
21 of investigation, discovery, and reasonable attorney’s fees, in an
22 amount not to exceed six hundred dollars (\$600).

23 (F) If the city prosecutor or city attorney accepts the assignment
24 of the right of the owner to bring the unlawful detainer action, the
25 owner shall retain all other rights and duties, including the handling
26 of the tenant’s personal property, following issuance of the writ
27 of possession and its delivery to and execution by the appropriate
28 agency.

29 (2) Upon the failure of the owner to file an action pursuant to
30 this section, or to respond to the city prosecutor or city attorney
31 as provided in paragraph (1), or having filed an action, if the owner
32 fails to prosecute it diligently and in good faith, the city prosecutor
33 or city attorney may file and prosecute the action, and join the
34 owner as a defendant in the action. This action shall have
35 precedence over any similar proceeding thereafter brought by the
36 owner, or to one previously brought by the owner and not
37 prosecuted diligently and in good faith. Service of the summons
38 and complaint upon the defendant owner shall be in accordance
39 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
40 Code of Civil Procedure.

1 (3) If a jury or court finds the defendant tenant guilty of unlawful
2 detainer in a case filed pursuant to paragraph (2), the city
3 prosecutor or city attorney may be awarded costs, including the
4 costs of investigation and discovery and reasonable attorney's fees.
5 These costs shall be assessed against the defendant owner, to whom
6 notice was directed pursuant to paragraph (1), and once an abstract
7 of judgment is recorded, it shall constitute a lien on the subject
8 real property.

9 (4) Nothing in this article shall prevent a local governing body
10 from adopting and enforcing laws, consistent with this article,
11 relating to drug abatement. Where local laws duplicate or
12 supplement this article, this article shall be construed as providing
13 alternative remedies and not preempting the field.

14 (5) Nothing in this article shall prevent a tenant from receiving
15 relief against a forfeiture of a lease pursuant to Section 1179 of
16 the Code of Civil Procedure.

17 (b) In any proceeding brought under this section, the court may,
18 upon a showing of good cause, issue a partial eviction ordering
19 the removal of any person, including, but not limited to, members
20 of the tenant's household if the court finds that the person has
21 engaged in the activities described in subdivision (a). Persons
22 removed pursuant to this section may be permanently barred from
23 returning to or reentering any portion of the entire premises. The
24 court may further order as an express condition of the tenancy that
25 the remaining tenants shall not give permission to or invite any
26 person who has been removed pursuant to this subdivision to return
27 to or reenter any portion of the entire premises.

28 (c) For the purposes of this section, "controlled substance
29 purpose" means the manufacture, cultivation, importation into the
30 state, transportation, possession, possession for sale, sale,
31 furnishing, administering, or giving away, or providing a place to
32 use or fortification of a place involving, cocaine, phencyclidine,
33 heroin, methamphetamine, or any other controlled substance, in a
34 violation of subdivision (a) of Section 11350, Section 11351,
35 11351.5, 11352, or 11359, subdivision (a) of Section 11360, or
36 Section 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5,
37 11379.6, or 11383 of the Health and Safety Code, if the offense
38 occurs on the subject real property and is documented by the
39 observations of a peace officer.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice of not less than 30 calendar days and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

SEC. 3. Section 1161 of the Code of Civil Procedure, as amended by Section 2 of Chapter 440 of the Statutes of 2008, is amended to read:

1161. A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him or her; provided the expiration is of a nondefault nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

1 2. When he or she continues in possession, in person or by
2 subtenant, without the permission of his or her landlord, or the
3 successor in estate of his or her landlord, if applicable, after default
4 in the payment of rent, pursuant to the lease or agreement under
5 which the property is held, and three days' notice, in writing,
6 requiring its payment, stating the amount which is due, the name,
7 telephone number, and address of the person to whom the rent
8 payment shall be made, and, if payment may be made personally,
9 the usual days and hours that person will be available to receive
10 the payment (provided that, if the address does not allow for
11 personal delivery, then it shall be conclusively presumed that upon
12 the mailing of any rent or notice to the owner by the tenant to the
13 name and address provided, the notice or rent is deemed received
14 by the owner on the date posted, if the tenant can show proof of
15 mailing to the name and address provided by the owner), or the
16 number of an account in a financial institution into which the rental
17 payment may be made, and the name and street address of the
18 institution (provided that the institution is located within five miles
19 of the rental property), or if an electronic funds transfer procedure
20 has been previously established, that payment may be made
21 pursuant to that procedure, or possession of the property, shall
22 have been served upon him or her and if there is a subtenant in
23 actual occupation of the premises, also upon the subtenant.

24 The notice may be served at any time within one year after the
25 rent becomes due. In all cases of tenancy upon agricultural lands,
26 where the tenant has held over and retained possession for more
27 than 60 days after the expiration of the term without any demand
28 of possession or notice to quit by the landlord or the successor in
29 estate of his or her landlord, if applicable, he or she shall be deemed
30 to be holding by permission of the landlord or successor in estate
31 of his or her landlord, if applicable, and shall be entitled to hold
32 under the terms of the lease for another full year, and shall not be
33 guilty of an unlawful detainer during that year, and the holding
34 over for that period shall be taken and construed as a consent on
35 the part of a tenant to hold for another year.

36 3. When he or she continues in possession, in person or by
37 subtenant, after a neglect or failure to perform other conditions or
38 covenants of the lease or agreement under which the property is
39 held, including any covenant not to assign or sublet, than the one
40 for the payment of rent, and three days' notice, in writing, requiring

1 the performance of such conditions or covenants, or the possession
2 of the property, shall have been served upon him or her, and if
3 there is a subtenant in actual occupation of the premises, also, upon
4 the subtenant. Within three days after the service of the notice, the
5 tenant, or any subtenant in actual occupation of the premises, or
6 any mortgagee of the term, or other person interested in its
7 continuance, may perform the conditions or covenants of the lease
8 or pay the stipulated rent, as the case may be, and thereby save the
9 lease from forfeiture; provided, if the conditions and covenants of
10 the lease, violated by the lessee, cannot afterward be performed,
11 then no notice, as last prescribed herein, need be given to the lessee
12 or his or her subtenant, demanding the performance of the violated
13 conditions or covenants of the lease.

14 A tenant may take proceedings, similar to those prescribed in
15 this chapter, to obtain possession of the premises let to a subtenant
16 or held by a servant, employee, agent, or licensee, in case of his
17 or her unlawful detention of the premises underlet to him or her
18 or held by him or her.

19 4. Any tenant, subtenant, or executor or administrator of his or
20 her estate heretofore qualified and now acting, or hereafter to be
21 qualified and act, assigning or subletting or committing waste upon
22 the demised premises, contrary to the conditions or covenants of
23 his or her lease, or maintaining, committing, or permitting the
24 maintenance or commission of a nuisance upon the demised
25 premises or using the premises for an unlawful purpose, thereby
26 terminates the lease, and the landlord, or his or her successor in
27 estate, shall upon service of three days' notice to quit upon the
28 person or persons in possession, be entitled to restitution of
29 possession of the demised premises under this chapter. For
30 purposes of this subdivision, a person who commits an offense
31 included in ~~paragraph (1) of subdivision (c) of Section 11571.1~~
32 ~~3485 of the Health and Safety Civil Code~~, or subdivision (c) of
33 ~~Section 3485~~ 3486 of the Civil Code, or uses the premises to further
34 the purpose of that offense shall be deemed to have committed a
35 nuisance upon the premises. For purposes of this subdivision, if a
36 person commits an act of domestic violence as defined in Section
37 6211 of the Family Code, sexual assault as defined in Section 261,
38 261.5, 262, 286, 288a, or 289 of the Penal Code, or stalking as
39 defined in Section 1708.7 of the Civil Code, against another tenant
40 or subtenant on the premises there is a rebuttable presumption

1 affecting the burden of proof that the person has committed a
2 nuisance upon the premises, provided, however, that this shall not
3 apply if the victim of the act of domestic violence, sexual assault,
4 or stalking, or a household member of the victim, other than the
5 perpetrator, has not vacated the premises. This subdivision shall
6 not be construed to supersede the provisions of the Violence
7 Against Women and Department of Justice Reauthorization Act
8 of 2005 (Public Law 109-162) that permit the removal from a lease
9 of a tenant who engages in criminal acts of physical violence
10 against cotenants.

11 5. When he or she gives written notice as provided in Section
12 1946 of the Civil Code of his or her intention to terminate the
13 hiring of the real property, or makes a written offer to surrender
14 which is accepted in writing by the landlord, but fails to deliver
15 possession at the time specified in that written notice, without the
16 permission of his or her landlord, or the successor in estate of the
17 landlord, if applicable.

18 As used in this section, tenant includes any person who hires
19 real property except those persons whose occupancy is described
20 in subdivision (b) of Section 1940 of the Civil Code.

21 This section shall remain in effect only until January 1, 2012,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2012, deletes or extends that date.

24 SEC. 4. Section 1161 of the Code of Civil Procedure, as added
25 by Section 3 of Chapter 440 of the Statutes of 2008, is amended
26 to read:

27 1161. A tenant of real property, for a term less than life, or the
28 executor or administrator of his or her estate heretofore qualified
29 and now acting or hereafter to be qualified and act, is guilty of
30 unlawful detainer:

31 1. When he or she continues in possession, in person or by
32 subtenant, of the property, or any part thereof, after the expiration
33 of the term for which it is let to him or her; provided the expiration
34 is of a nondefault nature however brought about without the
35 permission of his or her landlord, or the successor in estate of his
36 or her landlord, if applicable; including the case where the person
37 to be removed became the occupant of the premises as a servant,
38 employee, agent, or licensee and the relation of master and servant,
39 or employer and employee, or principal and agent, or licensor and
40 licensee, has been lawfully terminated or the time fixed for

1 occupancy by the agreement between the parties has expired; but
2 nothing in this subdivision shall be construed as preventing the
3 removal of the occupant in any other lawful manner; but in case
4 of a tenancy at will, it must first be terminated by notice, as
5 prescribed in the Civil Code.

6 2. When he or she continues in possession, in person or by
7 subtenant, without the permission of his or her landlord, or the
8 successor in estate of his or her landlord, if applicable, after default
9 in the payment of rent, pursuant to the lease or agreement under
10 which the property is held, and three days' notice, in writing,
11 requiring its payment, stating the amount which is due, the name,
12 telephone number, and address of the person to whom the rent
13 payment shall be made, and, if payment may be made personally,
14 the usual days and hours that person will be available to receive
15 the payment (provided that, if the address does not allow for
16 personal delivery, then it shall be conclusively presumed that upon
17 the mailing of any rent or notice to the owner by the tenant to the
18 name and address provided, the notice or rent is deemed received
19 by the owner on the date posted, if the tenant can show proof of
20 mailing to the name and address provided by the owner), or the
21 number of an account in a financial institution into which the rental
22 payment may be made, and the name and street address of the
23 institution (provided that the institution is located within five miles
24 of the rental property), or if an electronic funds transfer procedure
25 has been previously established, that payment may be made
26 pursuant to that procedure, or possession of the property, shall
27 have been served upon him or her and if there is a subtenant in
28 actual occupation of the premises, also upon the subtenant.

29 The notice may be served at any time within one year after the
30 rent becomes due. In all cases of tenancy upon agricultural lands,
31 where the tenant has held over and retained possession for more
32 than 60 days after the expiration of the term without any demand
33 of possession or notice to quit by the landlord or the successor in
34 estate of his or her landlord, if applicable, he or she shall be deemed
35 to be holding by permission of the landlord or successor in estate
36 of his or her landlord, if applicable, and shall be entitled to hold
37 under the terms of the lease for another full year, and shall not be
38 guilty of an unlawful detainer during that year, and the holding
39 over for that period shall be taken and construed as a consent on
40 the part of a tenant to hold for another year.

1 3. When he or she continues in possession, in person or by
2 subtenant, after a neglect or failure to perform other conditions or
3 covenants of the lease or agreement under which the property is
4 held, including any covenant not to assign or sublet, than the one
5 for the payment of rent, and three days' notice, in writing, requiring
6 the performance of such conditions or covenants, or the possession
7 of the property, shall have been served upon him or her, and if
8 there is a subtenant in actual occupation of the premises, also, upon
9 the subtenant. Within three days after the service of the notice, the
10 tenant, or any subtenant in actual occupation of the premises, or
11 any mortgagee of the term, or other person interested in its
12 continuance, may perform the conditions or covenants of the lease
13 or pay the stipulated rent, as the case may be, and thereby save the
14 lease from forfeiture; provided, if the conditions and covenants of
15 the lease, violated by the lessee, cannot afterward be performed,
16 then no notice, as last prescribed herein, need be given to the lessee
17 or his or her subtenant, demanding the performance of the violated
18 conditions or covenants of the lease.

19 A tenant may take proceedings, similar to those prescribed in
20 this chapter, to obtain possession of the premises let to a subtenant
21 or held by a servant, employee, agent, or licensee, in case of his
22 or her unlawful detention of the premises underlet to him or her
23 or held by him or her.

24 4. Any tenant, subtenant, or executor or administrator of his or
25 her estate heretofore qualified and now acting, or hereafter to be
26 qualified and act, assigning or subletting or committing waste upon
27 the demised premises, contrary to the conditions or covenants of
28 his or her lease, or maintaining, committing, or permitting the
29 maintenance or commission of a nuisance upon the demised
30 premises or using the premises for an unlawful purpose, thereby
31 terminates the lease, and the landlord, or his or her successor in
32 estate, shall upon service of three days' notice to quit upon the
33 person or persons in possession, be entitled to restitution of
34 possession of the demised premises under this chapter. For
35 purposes of this subdivision, a person who commits an offense
36 included in ~~paragraph (1) of subdivision (c) of Section 11571.1~~
37 ~~3485 of the Health and Safety Civil Code~~, or subdivision (c) of
38 ~~Section 3485~~ 3486 of the Civil Code, or uses the premises to further
39 the purpose of that offense shall be deemed to have committed a
40 nuisance upon the premises.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

This section shall become operative on January 1, 2012.

SEC. 5. Section 11571.1 of the Health and Safety Code is repealed.

~~11571.1. (a) To effectuate the purposes of this article, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to a controlled substance purpose. In filing this action, which shall be based upon an arrest report or on another action or report by a law enforcement agency, the city prosecutor or city attorney shall utilize the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:~~

~~(1) (A) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give 30 calendar days' written notice to the owner, requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to a controlled substance purpose.~~

~~(B) This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (c).~~

~~(C) The notice to the tenant shall also include on the bottom of its front page, in at least 14-point bold type, the following:~~

~~"Notice to Tenant: This notice is not a notice of eviction. However, you should know that an eviction action may soon be~~

1 filed in court against you for suspected drug activity, as described
2 above. You should call (insert name and telephone number of the
3 city attorney or prosecutor pursuing the action) or legal aid to stop
4 the eviction action if any of the following is applicable:

- 5 (i) You are not the person named in this notice.
- 6 (ii) The person named in the notice does not live with you.
- 7 (iii) The person named in the notice has permanently moved.
- 8 (iv) You do not know the person named in the notice.
- 9 (v) You have any other legal defense or legal reason to stop the
10 eviction action.

11 A list of legal assistance providers is attached to this notice.
12 Some provide free legal help if you are eligible.”

13 (D) The owner shall, within 30 calendar days of the mailing of
14 the written notice, either provide the city prosecutor or city attorney
15 with all relevant information pertaining to the unlawful detainer
16 case, or provide a written explanation setting forth any
17 safety-related reasons for noncompliance, and an assignment to
18 the city prosecutor or city attorney of the right to bring an unlawful
19 detainer action against the tenant.

20 (E) The assignment shall be on a form provided by the city
21 prosecutor or city attorney and may contain a provision for costs
22 of investigation, discovery, and reasonable attorney’s fees, in an
23 amount not to exceed six hundred dollars (\$600).

24 (F) If the city prosecutor or city attorney accepts the assignment
25 of the right of the owner to bring the unlawful detainer action, the
26 owner shall retain all other rights and duties, including the handling
27 of the tenant’s personal property, following issuance of the writ
28 of possession and its delivery to and execution by the appropriate
29 agency.

30 (2) Upon the failure of the owner to file an action pursuant to
31 this section, or to respond to the city prosecutor or city attorney
32 as provided in paragraph (1), or having filed an action, if the owner
33 fails to prosecute it diligently and in good faith, the city prosecutor
34 or city attorney may file and prosecute the action, and join the
35 owner as a defendant in the action. This action shall have
36 prececedence over any similar proceeding thereafter brought by the
37 owner, or to one previously brought by the owner and not
38 prosecuted diligently and in good faith. Service of the summons
39 and complaint upon the defendant owner shall be in accordance

1 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
2 Code of Civil Procedure.

3 (3) ~~If a jury or court finds the defendant tenant guilty of unlawful~~
4 ~~detainer in a case filed pursuant to paragraph (2), the city~~
5 ~~prosecutor or city attorney may be awarded costs, including the~~
6 ~~costs of investigation and discovery and reasonable attorney's fees.~~
7 ~~These costs shall be assessed against the defendant owner, to whom~~
8 ~~notice was directed pursuant to paragraph (1), and once an abstract~~
9 ~~of judgment is recorded, it shall constitute a lien on the subject~~
10 ~~real property.~~

11 (4) ~~Nothing in this article shall prevent a local governing body~~
12 ~~from adopting and enforcing laws, consistent with this article,~~
13 ~~relating to drug abatement. Where local laws duplicate or~~
14 ~~supplement this article, this article shall be construed as providing~~
15 ~~alternative remedies and not preempting the field.~~

16 (5) ~~Nothing in this article shall prevent a tenant from receiving~~
17 ~~relief against a forfeiture of a lease pursuant to Section 1179 of~~
18 ~~the Code of Civil Procedure.~~

19 (b) ~~In any proceeding brought under this section, the court may,~~
20 ~~upon a showing of good cause, issue a partial eviction ordering~~
21 ~~the removal of any person, including, but not limited to, members~~
22 ~~of the tenant's household if the court finds that the person has~~
23 ~~engaged in the activities described in subdivision (a). Persons~~
24 ~~removed pursuant to this section may be permanently barred from~~
25 ~~returning to or reentering any portion of the entire premises. The~~
26 ~~court may further order as an express condition of the tenancy that~~
27 ~~the remaining tenants shall not give permission to or invite any~~
28 ~~person who has been removed pursuant to this subdivision to return~~
29 ~~to or reenter any portion of the entire premises.~~

30 (c) ~~For the purposes of this section, "controlled substance~~
31 ~~purpose" means the manufacture, cultivation, importation into the~~
32 ~~state, transportation, possession, possession for sale, sale,~~
33 ~~furnishing, administering, or giving away, or providing a place to~~
34 ~~use or fortification of a place involving, cocaine, phenylidine,~~
35 ~~heroin, methamphetamine, or any other controlled substance, in a~~
36 ~~violation of subdivision (a) of Section 11350, Section 11351,~~
37 ~~11351.5, 11352, or 11359, subdivision (a) of Section 11360, or~~
38 ~~Section 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5,~~
39 ~~11379.6, or 11383, if the offense occurs on the subject real property~~
40 ~~and is documented by the observations of a peace officer.~~

1 ~~(d) Notwithstanding subdivision (b) of Section 68097.2 of the~~
2 ~~Government Code, a public entity may waive all or part of the~~
3 ~~costs incurred in furnishing the testimony of a peace officer in an~~
4 ~~unlawful detainer action brought pursuant to this section.~~

5 ~~(e) The notice and documentation described in paragraph (1)~~
6 ~~of subdivision (a) shall be given in writing and may be given either~~
7 ~~by personal delivery or by deposit in the United States mail in a~~
8 ~~sealed envelope, postage prepaid, addressed to the owner at the~~
9 ~~address known to the public entity giving the notice, or as shown~~
10 ~~on the last equalized assessment roll, if not known. Separate notice~~
11 ~~of not less than 30 calendar days and documentation shall be~~
12 ~~provided to the tenant in accordance with this subdivision. Service~~
13 ~~by mail shall be deemed to be completed at the time of deposit in~~
14 ~~the United States mail. Proof of giving the notice may be made by~~
15 ~~a declaration signed under penalty of perjury by any employee of~~
16 ~~the public entity which shows service in conformity with this~~
17 ~~section.~~

18 ~~(f) This section shall only apply to the following courts:~~

19 ~~(1) In the County of Los Angeles, any court having jurisdiction~~
20 ~~over unlawful detainer cases involving real property situated in~~
21 ~~the City of Los Angeles, the City of Long Beach, or the City of~~
22 ~~Palmdale.~~

23 ~~(2) In the County of San Diego, any court having jurisdiction~~
24 ~~over unlawful detainer cases involving real property situated in~~
25 ~~the City of San Diego.~~

26 ~~(3) In the County of Alameda, any court with jurisdiction over~~
27 ~~unlawful detainer cases involving real property situated in the City~~
28 ~~of Oakland.~~

29 ~~(g) (1) The city attorney and city prosecutor of each~~
30 ~~participating jurisdiction shall provide to the Judicial Council the~~
31 ~~following information:~~

32 ~~(A) The number of notices provided pursuant to paragraph (1)~~
33 ~~of subdivision (a).~~

34 ~~(B) The number of cases filed by an owner, upon notice.~~

35 ~~(C) The number of assignments executed by owners to the city~~
36 ~~attorney or city prosecutor.~~

37 ~~(D) The number of three-day, 30-day, or 60-day notices issued~~
38 ~~by the city attorney or city prosecutor.~~

39 ~~(E) The number of cases filed by the city attorney or city~~
40 ~~prosecutor.~~

1 ~~(F) The number of times that an owner is joined as a defendant~~
2 ~~pursuant to this section.~~

3 ~~(G) As to each case filed by an owner, the city attorney, or the~~
4 ~~city prosecutor, the following information:~~

5 ~~(i) The number of judgments ordering an eviction or partial~~
6 ~~eviction (specify whether default, stipulated, or following trial).~~

7 ~~(ii) The number of cases, listed by separate categories, in which~~
8 ~~the case was withdrawn or in which the tenant prevailed.~~

9 ~~(iii) The number of other dispositions (specify disposition).~~

10 ~~(iv) The number of defendants represented by counsel.~~

11 ~~(v) Whether the case was a trial by the court or a trial by a jury.~~

12 ~~(vi) Whether an appeal was taken, and, if so, the result of the~~
13 ~~appeal.~~

14 ~~(vii) The number of cases in which partial eviction was~~
15 ~~requested, and the number of cases in which the court ordered a~~
16 ~~partial eviction.~~

17 ~~(H) As to each case in which a notice was issued, but no case~~
18 ~~was filed, the following information:~~

19 ~~(i) The number of instances in which a tenant voluntarily vacated~~
20 ~~the unit.~~

21 ~~(ii) The number of instances in which a tenant vacated a unit~~
22 ~~prior to the providing of the notice.~~

23 ~~(iii) The number of cases in which the notice provided pursuant~~
24 ~~to subdivision (a) was erroneously sent to the tenant. (List reasons,~~
25 ~~if known, for the erroneously sent notice, such as reliance on~~
26 ~~information on the suspected controlled substance law violator's~~
27 ~~name or address that was incorrect; clerical error; or any other~~
28 ~~reason.)~~

29 ~~(iv) The number of other resolutions (specify resolution).~~

30 ~~(2) (A) Information compiled pursuant to this section shall be~~
31 ~~reported annually to the Judicial Council on or before January 30~~
32 ~~of each year.~~

33 ~~(B) The Judicial Council shall thereafter submit a brief report~~
34 ~~to the Senate and Assembly Committees on the Judiciary once on~~
35 ~~or before April 15, 2007, and once on or before April 15, 2009,~~
36 ~~summarizing the information collected pursuant to this section and~~
37 ~~evaluating the merits of the pilot programs established by this~~
38 ~~section.~~

1 ~~(h) This section shall remain in effect only until January 1, 2010,~~
2 ~~and as of that date is repealed unless a later enacted statute deletes~~
3 ~~or extends that date.~~

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